



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

September 03, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

33 September 3, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**MEMORANDUM OF UNDERSTANDING BETWEEN
ANTELOPE VALLEY-EAST KERN WATER AGENCY AND
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40,
ANTELOPE VALLEY, FOR NEW WATER SUPPLIES
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

SUBJECT

This action is to authorize the Director of Public Works or her designee to execute a Memorandum of Understanding between the Antelope Valley-East Kern Water Agency and the Los Angeles County Waterworks District No. 40, Antelope Valley, and implement a new water supply acquisition program that will provide a framework for purchasing new water supply entitlements for development projects in the Antelope Valley.

IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY:

1. Authorize the Director of Public Works or her designee to execute a Memorandum of Understanding between the Antelope Valley-East Kern Water Agency and the Los Angeles County Waterworks District No. 40, Antelope Valley, and implement a new water supply acquisition program consistent with the Memorandum of Understanding.
2. Find that the execution of the Memorandum of Understanding is a nonproject according to Section 15378 of the California Environmental Quality Act Guidelines and is therefore exempt from California Environmental Quality Act requirements.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This action would allow the Los Angeles County Waterworks District No. 40, Antelope Valley (District) to continue issuing Will Serve Letters to developers based on a Memorandum of Understanding (MOU) substantially in the form of the enclosed MOU. The MOU will provide a framework for the District and Antelope Valley-East Kern Water Agency (AVEK) to work together to secure the water supplies necessary to meet the District's present and future water demands.

Currently, the District does not have sufficient reliable water supply to serve additional developments within and adjacent to its service boundaries. In the MOU, both parties agree to work together to acquire additional imported water supply entitlements. Prior to obtaining a Will Serve Letter, development applicants will be required to submit a deposit, currently set at \$10,000 per acre-foot, to purchase needed water supply and enter into a water supply agreement with the District. AVEK will use these funds to negotiate and execute a contract for additional Table A water or other permanent water supplies that will be allocated to the District for use in providing water service to the developer's project. If the acquisition costs are more or less than the deposit amount, the developer will be required to pay the difference if the cost is higher than their deposit amount or the developer will receive a refund if the cost is lower, in accordance to the MOU.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Integrated Services Delivery (Goal 3) as it will help protect available water supplies for our existing customers and provide direction for developing new water supplies for future customers.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

All costs for future water supply entitlement purchases will be funded by future development through developer deposits made to the District and transferred to AVEK. However, additional payments by the developer may be required if the acquisition costs are higher than the deposit amounts. The District may require a separate guarantee, such as a surety bond, to ensure payment. There will be no impact to the District as the District's funds will not be used to pay the cost to purchase new water supply entitlement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The District may supply the inhabitants of the Antelope Valley with water for irrigation, domestic, industrial, or fire protection purposes, and may do all things necessary or proper to accomplish this purpose per Water Codes 55330 and 55331. However, the District cannot directly hold new water supplies from the State Water Project. That right is reserved by contract to the State Water Project contractors, one of which is AVEK. This MOU will provide the legal basis for contracting with AVEK to purchase, hold, and deliver new water supplies to the District, separate and apart from supplies provided by AVEK's current entitlement of 141,400 acre-feet per year. Using third party agreements, these new water supplies will be purchased with a 100 percent reliability factor in perpetuity, allowing the District the flexibility to better allocate currently committed but not utilized water supplies.

ENVIRONMENTAL DOCUMENTATION

The Honorable Board of Supervisors

9/3/2013

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This action is a nonproject according to Section 15378 of the California Environmental Quality Act (CEQA) Guidelines and is therefore exempt from CEQA requirements. Prior to the execution of water entitlement acquisition contracts, CEQA requirements will be met. A notice of exemption will be filed pursuant to Section 15060(c).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current County services or projects as a result of this action.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Waterworks Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER

Director

GF:AA:dvt

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is effective as of _____ by and between Antelope Valley-East Kern Water Agency ("AVEK") and Los Angeles County Waterworks District No. 40, Antelope Valley ("Waterworks District").

RECITALS

A. The Waterworks District provides retail water service to customers located within its service area, all of which is also located within AVEK's boundaries. The sources of supply for such service include the native groundwater supply and imported water supply, which AVEK has obtained from the State Water Project for delivery on a wholesale basis to retail water purveyors within AVEK's boundaries, such as the Waterworks District.

B. The native groundwater supply available to the Waterworks District is limited in amount and is the subject of a pending adjudication involving scores of other parties who claim the right to a portion of that limited groundwater supply. The imported water supply available to the Waterworks District from AVEK is likewise limited. Depending upon the results of the pending adjudication, the Waterworks District believes that the total combined water supply available to the Waterworks District from native groundwater sources and from imported water sources is insufficient to satisfy existing water service commitments within its service area and additional anticipated development within its service area. The Waterworks District believes that it cannot make additional commitments to provide retail water service to additional customers within its service area unless arrangements are made to obtain additional imported water supplies to service the additional demand.

C. Additional imported water supplies from the State Water Project cannot be held by the Waterworks District, as it is not a State Water Project Contractor, but can be held by AVEK for the benefit of the Waterworks District.

D. The Waterworks District and AVEK have discussed a cooperative strategy to obtain additional imported water supplies that will be held by AVEK but committed to servicing additional demands caused by new development within the service area of the Waterworks District. The purpose of this MOU is to set forth the procedures to be implemented by the Waterworks District and AVEK, immediately, and the commitments that each will make to the other, to obtain the additional imported water supplies necessary to service additional demands caused by additional development within the Waterworks District's service area.

PROCEDURES

1. An applicant seeking a water service commitment from the Waterworks District shall submit a request to the Waterworks District for review and comment.

2. The Waterworks District will identify the local water resources available to address the anticipated water demand for the connection(s) sought by the applicant,

which may include recycled water, or such other local resources that the Waterworks District determines are acceptable. The Waterworks District will determine how much additional imported water must be acquired in order to provide retail water service to the applicant's development.

3. The Waterworks District and AVEK will enter into an agreement by which the Waterworks District may require the applicant to deposit with the Waterworks District the amount of money estimated by AVEK to be necessary to fund AVEK's cost of purchasing the additional imported water supplies required by the Waterworks District as a condition of providing a service commitment to the applicant's development. Upon receipt of that deposit by the applicant, the Waterworks District will then deposit that amount with AVEK. The deposit shall cover the estimated purchase price of the additional water supplies, AVEK's cost of completing the environmental assessment under the California Environmental Quality Act and the National Environmental Policy Act (if required), and AVEK's transactional costs including document preparation and review by AVEK staff and legal counsel ("Costs"). As of the effective date of this MOU, Costs are estimated to equal Ten Thousand and 00/100 Dollars (\$10,000.00) for each acre-foot of additional imported water supplies to be acquired; however, AVEK may revise that estimated dollar amount per acre-foot from time to time to reflect changes in anticipated purchase prices and costs, including litigation costs in the event of a legal challenge related to the purchase of the additional water supplies. AVEK may require the amount of the deposit to be augmented as necessary to cover actual Costs that AVEK expects to incur to complete the purchase of the additional imported water supplies, and in such event the Waterworks District will require the applicant to deposit the additional amount with the Waterworks District, which will then make the additional deposit with AVEK. The Waterworks District will develop a form of agreement to be executed between the applicant and the Waterworks District to implement the terms of this paragraph, including hold harmless and indemnification language to protect AVEK and the Waterworks District. The money provided by the applicant must be deposited directly with the Waterworks District, and not into a third party escrow account. AVEK will credit the Waterworks District with interest earned on the deposit with AVEK at the rate paid by the Local Agency Investment Fund of the State of California during the period that the money remains on deposit with AVEK, prorated as necessary to reflect the date of deposit and the date of expenditure or return to the applicant.

4. Upon receipt of the required deposit, AVEK will confirm to the Waterworks District in writing that AVEK has received the required deposit and is committed to acquiring the additional requested water supplies. The Waterworks District, at its option, may then provide the applicant with a written commitment to provide water service to the applicant's development, conditional upon satisfaction of all requirements set forth in the written agreement between the Waterworks District and the applicant.

5. Although AVEK cannot guarantee success, AVEK will undertake all objectively reasonable steps to identify and purchase additional State Water Project Table A Amounts or other water supply entitlements in the amounts requested by the Waterworks District to service the applicant's anticipated demand, including preparation and review of all agreements necessary to effect the purchase of the additional water

supplies and the transportation of such supplies to AVEK, completion of environmental analysis pursuant to the California Environmental Quality Act and the National Environmental Policy Act (if applicable), acquisition of such permits as may be required, compliance with all regulatory requirements that may apply, and the defense of such lawsuits or other legal challenges as may be filed to challenge the acquisition of additional water supplies and the transportation of such supplies to their intended place of use. The Waterworks District will cooperate with AVEK in the defense of such lawsuits or legal challenges, will hold AVEK harmless from any such legal challenges, and will include provisions in its agreement with the applicant which require the applicant to fully indemnify the Waterworks District, in addition to AVEK, from any such challenges.

6. Upon completion of acquisition of the additional water supplies as requested by the Waterworks District and conclusion of all legal proceedings to challenge the acquisition of such supplies or their transportation to the intended place of use, AVEK will notify the Waterworks District in writing, and will provide the Waterworks District with a final accounting of Costs incurred by AVEK. If a balance remains in the deposit by the Waterworks District, AVEK will deliver that excess deposit to the Waterworks District in exchange for the applicant's execution and transmittal to AVEK of a release, which releases AVEK and the Waterworks District from all claims of any sort related to the acquisition of the additional water supplies, upon release to applicant of the remaining balance of applicant's deposit. If a final accounting reveals that the amount on deposit with AVEK was insufficient to fully reimburse AVEK for all Costs incurred, the Waterworks District will deposit with AVEK an amount equal to the amount of the deficit, which will be due and payable within ninety (90) days of the date of the final accounting provided to the Waterworks District, and AVEK will concurrently provide the Waterworks District with a release to be signed by the applicant releasing AVEK and the Waterworks District from all claims of any sort related to the acquisition of the additional water supplies.

7. The additional water supplies acquired on behalf of the Waterworks District shall be held by AVEK for exclusive use by the Waterworks District within its retail distribution system. All annual or periodic charges from the State of California allocable to the additional Table A Amount, or from the seller of other water supply entitlements allocable to those entitlements, for the ongoing use of those entitlements, will be paid by AVEK, and in turn AVEK will invoice the Waterworks District for reimbursement. Each such invoice will identify the nature of the charge and how it was calculated. AVEK will provide the Waterworks District with such backup documentation as the Waterworks District may request, and which AVEK may have, upon request. The Waterworks District will pay the invoice to AVEK within forty-five (45) days after receipt. The Waterworks District will be free to recover these amounts from the applicant's specific development, or from its rates and charges imposed on all customers, as the Waterworks District deems appropriate in its discretion.

8. If a temporary period of time exists between AVEK's acquisition of an additional water supply for use by the Waterworks District to provide service to the applicant, and the setting of service connections with meters for the Waterworks District

to commence service to the applicant's development, AVEK itself may bear the expense of ongoing annual or periodic charges attributable to the new water supply, without invoicing to the Waterworks District for reimbursement of such charges to AVEK, and in such event AVEK will be authorized to use the additional water supply on a temporary basis to satisfy the demands of other AVEK customers. However, the additional water supply used by AVEK on a temporary basis to address other demands shall not be permanently committed to those other demands, but shall remain available for use by the Waterworks District to service the demands of the applicant when needed. If such water use requires proration of charges between the period of AVEK's use and the commencement of use by the Waterworks District, AVEK will provide the Waterworks District with a copy of its calculation of the prorated charges. If necessary, AVEK and the Waterworks District will meet to resolve any differences or disputes amicably.

9. The above described procedures and commitments may be revised by mutual consent from time to time as appropriate to adjust to changing circumstances or needs, or to conform to orders or procedures resulting from the pending adjudication of groundwater rights in the Antelope Valley. As a new program, AVEK and the Waterworks District commit to meeting annually to review the MOU and implementing agreements, to make modifications as necessary to improve the procedures and correct any inequities that may arise, and to deal with each other in good faith to address such circumstances or needs.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, ANTELOPE VALLEY

By _____

Date: _____

ANTELOPE VALLEY-EAST KERN
WATER AGENCY

By _____

Date: _____